

RESTITUTO J. CASTRO, ADMINISTRATOR AND APPELLEE, VS. MARIANO LITAO, OPPOSITOR AND APPELLANT.

G. R. No. 31673. March 31, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

The now deceased Perfecto Sanchez left two wills, both of them in the Tagalog language. The first will is dated January 6, 1922, and translated into Spanish reads as follows :

"Sepan todos que yo, Perfecto Sanchez, natural en el barrio de Bambang, Municipio de Bulacan, Provincia de Bulacan, mayor de edad, casado con Andrea de Jesus, debido a mi enfermedad he creido conveniente hacer mi testamento o mi ultima voluntad que es mi deseo que se cumpliera caso de que me muera, y debido a esto libre y espontaneamente hago constar los siguientes:

"Primero. Hallome en el pleno uso de mis facultades mentales y es mi voluntad todo lo que aparece en el presente testamento, y lo he hecho sin que nadie me forzara. "Segundo. Tengo una pesqueria llamada 'Nabungf que se encuentra en el sitio llamado Kaliligawan at Nagtahep en la jurisdiccion del barrio de Bambang, parte de la cual he comprado de los hermanos Antonio, Canuto, Valeriano y Catalino Morelos y Mariano y Lucia Felix el 21 de mayo de 1900 y la otra parte he comprado de Braulio Rodriguez y Maxquez el 22 de septiembre de 1904, cuya extension superficial de la totalidad es poco mas o menos de 15 hectareas. Los colindantes son los Sres. Francisco Icasiano, Teodoro Rodriguez, Maria Villanueva, Pioquinto Esguerra y el Rio Kay Siote. Toda esta pesqueria cedo en calidad de herencia a mi senora Andrea de Jesus caso de que me muera.

"Tercero. Cedo tambien en calidad de herencia a mi esposa Sra. Andrea de Jesus mis dos bancas Pamandawan, una banca Lunday y todos los mobiliarios que se encuentran dentro de la casa en donde vivimos.

"Cuarto. Aunque la casa que habitamos ahora y el solar en que la misma esta edificada son de la propiedad de mi madre, razoxi por la cual solamente una mitad pertenece a mi y la otra mitad a mi difunta hermana Dona Isabel Sanchez, y ahora a su nieto Mariano Litao, pero desde el comedor hasta la azotea, fue construida por mi y mi esposa, y como quiera que todos mis bienes y denuas propiedades, excepci6n hecha de los que aqui expresamente lego a mi esposa, lo ceder6 al citado Mariano Litao, que es, tambien mi nieto, es mi voluntad que toda la citada casa y solar pasen como herencia a mi esposa Dona Andrea de Jesus.

"Quinto. Revoco y cancelo cualquier otro testamento otorgado por mi con anterioridad a esta fecha. "En testimonio de todo lo cual he firmado este testamento consistente en dos hojas en presencia de los Sres. Anselmo Castro, Santiago Teodoro y Le6n Gonzalez y cada uno de ellos firm6 en mi presencia y en la de todos ellos, hoy 6 de enero del aiiio 1922.

"(Fdo.) Perfecto Sanchez

"Declaramos y hacemos constar que este testamento fué firmado por el testador en presencia de todos y cada uno de nosotros ha firmado en presencia del mismo y en la de cada uno de nosotros.

"(Fdos.) Anselmo Castro

"Leon Gonzalez

" Santiago Teodoro"

The second will, which is in the nature of a codicil is dated July 4, 1922. It reads as follows:

"Conste a Todos los que Lean Este Documento—

"Que yo, Perfecto Sanchez, esposo de Andrea de Jestis, en edad competente, iresidente en Bambang, Bulacan, en el pJeno disfrute de mis facultades mentales, sin que nadie me induzca, me fuerce o me intimide, sin que me seduzcan ni se ejerciese violencia sobre mi he mandado hacer esta mi ultima escritura o testamento que deseo se obedezca y se cumpla por completo:

"Primero. Ratifico y encargo de nuevo que se cumpla todo lo que he expuesto en mi testamento hecho en 6 de enero de 1922, concerniente a la participaci6n hereditaria que dejo a mi esposa Andrea de Jesus, y con excepci6n de lo dispuesto ya referente a mi esposa, lo que debe seguirse y quiero que se mantenga es este testamento, referente a mis otros bienes. "Segundo. Mi difunta hermana Isabel y yo hemos heredado en partes iguales dos parcelas de terreno, una la llamada pesqueria Tagwmg Bintol y la otra situada en Hagonoy, Bulacan, y que se ha ganado en la Corte Suprema en un asunto representado por el abogado Sr. Mariano Escueta. Mis derechos y participation en dichas dos parcelas de terreno recien mencionadas los cedo y dejo en herencia a nuestro yerno Restituto J. Castro, quien debera cumplir las ordenes y condiciones siguientes:

"(a) Que el, Restituto J. Castro, no podra vender ni hipotecar ni totalmente ni en parte los terrenos que le dejo en herencia.

"(6) Que de lo que se coseche anualmente separara el importe que sea necesario para el estudio de Dominador Martin hasta que este termine su carrera.

"Tercero. Es mi voluntad, si fuera posible y lo aceptara el heredero de mi hermana o el que ha de representarle, que Restituto J. Castro se quede exclusivamente con el Tagwmg Bintol, y que el terreno de Hagonoy sea para el heredero de mi hermana, o si no que se hiciesen una permuta, segfin como los mismos llegasen a convenir.

"En testimonio de todo, he firmado esta escritura de dos hojas, en presencia de los testigos, y todos y cada uno de ellos han firmado en presencia mfa el testador, y de todos y cada uno de ellos, aqui en Bulacan, Bulacan, hoy a 4 de julio del aiiio de 1922.

"Perfecto SAnchez

"Nosotros, los testigos firmantes abajo, hacemos constar y atestiguamos que el Sr. Perfecto Sanchez firm6 en este testamento de dos hojas en presencia de nosotros, los testigos, y todos y cada uno de nosotros firmamos este testamento en presencia del testador y de todos y cada uno de nosotros mismos, los testigos.

"tlmoteo del rosarxo

"Bruno Litao

"Ramon S. Ycasiano"

On March 10, 1923, Perfecto Sanchez died and after the wills were admitted to probate, Restituto J. Castro and the widow of the deceased, Andrea de Jesus, were appointed joint executors on May 3, 1923. Subsequently, Andrea de Jesus died, and Segundo Constantino was appointed administrator of her estate. On October 3, 1928,

Restituto J. Castro, as executor of the wills, filed a scheme of distribution in Which an undivided half of the fisheries of Hagonoy and Taguang Bintol was adjudicated to Castro, but the provision of the deceased that the heir of his sister should have the option of exchanging his half of Taguang Bintol with Castro's half of the Hagonoy fishery, was not mentioned. It may be noted that Mariano Litao was the heir referred to and that he expressed his preference for the Hagonoy property in conformity with his uncle's desire. Neither was any mention made of the limitation placed on Castro's inheritance and which prohibited him from selling the property devised to him by the will.

On the ground that final accounts had not been rendered, the court below declined to approve the partition, but on January 4, 1929, Castro presented another scheme of partition substantially in conformity with the earlier one, and, as occurred in that scheme, neither Mariano Litao nor the aforesaid limitation were mentioned.

Attorney Fernando Rodrigo, in representation of Litao, opposed the proposed partition on the grounds (a) that under clause four of the will of January 6, 1922, Litao must be regarded as the residuary heir of the deceased and (b) that the option granted Litao in clause three of the second will should have been taken into consideration. Notwithstanding the opposition, the court, on January 24, 1929, approved the partition and declared the proceedings closed and relieved Castro from all responsibility and ordered his bond cancelled. The court further ordered the register of deeds to register or inscribe the properties in question in the name of the respective heirs in conformity with the partition.

A motion for reconsideration was filed and denied, and Litao appealed to this court. In the meantime, Castro had the certificates of title to the Taguang Bintol and Hagonoy properties cancelled and reissued in his name for the one-half adjudicated to him, and almost immediately thereafter and in violation of the provisions of the wills, he sold the Hagonoy property to Dr. Nicanor Jacinto for the sum of P15,000. It also appears from the record that on April 20, 1929, over two months after the appeal was taken, Judge Juan G. Lesaca, then presiding, held that the annotations, inscriptions, and transfers made by the register of deeds on certificates of title Nos. 24 and 906, the title documents for the Taguang Bintol and Hagonoy properties, were null and void, and the register of deeds was therefore ordered to cancel said annotations, inscriptions, and transfers and consequently also the transfer certificates issued by the register of deeds in that connection.

The appellant presents the following assignments of error:

"1. The lower court erred in disregarding the fact that the decedent Perfecto Sanchez expressly willed the whole of the 'Taguang Bintol' fishery to Restituto J. Castro, and the exclusive ownership of the Hagonoy land to the appellant.

"2. The lower court erred in disregarding the orders and conditions to which the testator subjected the legacy in favor of Restituto J. Castro.

"3. The lower court erred in declining to hold that the appellant has been instituted the universal heir of all the decedent's estate not expressly devised to his wife or to Restituto J. Castro.

"4. The lower court erred in passing final judgment without evidence of any sort, and solely upon the agreement between Restituto J. Castro and Segundo Constantino."

The first two assignments of error are well taken. The option granted Litao in regard to the Taguang Bintol and Hagonoy fisheries is very clearly expressed in clause 3 of the will of July 4, 1922, and the court erred in overlooking that provision.

It is also very clear that Restituto J. Castro, in accordance with the second will, acquired only a life estate in the real property devised to him, the remainder to his heirs, and that the court below erred in adjudicating the property

to him in fee simple thus violating the provisions of said will. It follows that Castro had no authority to sell any part of the property and that the sale made by him to Dr. Nicanor Jacinto is prima facie null and void, but as it does not appear that Doctor Jacinto has had his day in court before this appeal was taken, we cannot definitely determine his rights in this case. We may say, however, that in view of the fact that he bought only a one-half interest in the Hagonoy fishery and that he should have known that Litao, the owner of the other one-half, was a minor, it seems that unless special circumstances existed, Doctor Jacinto can hardly claim the protection of section 39 of the Land Registration Act. It was his duty to use reasonable care in ascertaining the rights of Litao in the property.

Under the third assignment of error, the appellant insists that in accordance with the provisions of the fourth clause of the will dated January 6, 1922, he must be considered the residuary legatee of the deceased Perfecto Sanchez. This contention rests on the interpretation of the Tagalog word "ipagkakaloob" in the original of the will of July 4, 1922. The appellant claims that the word is in the present tense while the appellee maintains that it is in the future tense. The members of this court who are thoroughly conversant with the Tagalog language are unanimous in construing the word as indicating future and not present action. This construction taken in connection with the context shows that the testator contemplated a donation of the residue of his property to Litao but had not as yet carried out that intention. We therefore hold that the appellant is not a residuary legatee of the deceased, and that the court below did not err upon this point.

The fourth assignment of error needs no discussion. The astonishing carelessness in closing the administration proceedings without taking into consideration the option on the Hagonoy property granted the minor Mariano Litao in the will of July 4, 1922, and the limitations on the titles of Restituto J. Castro to the property devised to him, makes it necessary to reopen said proceedings.

The order of January 24, 1929, is therefore reversed, and it is ordered that the administration proceedings be reopened ; that Restituto J. Castro be removed from his office as administrator of the estate in question; that another and suitable person be appointed administrator of said estate; that a new distribution and partition be made in strict accordance with the aforesaid wills of the deceased upon notice to the interested parties; and that Restituto J. Castro be required to account for the illegal sale of the Hagonoy property in the event that said sale cannot be set aside and annulled. His bond as administrator will remain in force. Without costs in this instance. So ordered.

Malcolm, Villamor, Johns, Romualdez and Villa-Real, JJ., concur.

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